



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Confirmation No.: 6992

Scott Banister, et al.

Group Art Unit No.: 2681

Serial No.: 10/717,441

Examiner: NYA

Filed on: November 18, 2003

For: ELECTRONIC MESSAGE DELIVERY
WITH ESTIMATION APPROACHES

Mail Stop Missing Parts
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

PETITION TO ACCEPT APPLICATION UNDER 37 C.F.R. §1.47(a)

Sir:

Applicants and IronPort Systems, Inc., which is assignee hereunder, hereby petition the Commissioner to accept this application on behalf of fewer than all the named inventors, under 35 U.S.C. §116, second paragraph, and 37 C.F.R. §1.47(a).

1. **Fee.** The fee of \$130.00 as required by 37 C.F.R. §§ 1.47(a), 1.17(h) is enclosed.
2. **Last Known Addresses.** In compliance with 37 C.F.R. §1.47(a) and MPEP 409.03(a)(C), the last known addresses of the non-signing inventor is: Mr. Scott Banister, 607 Farallon Avenue, Pacifica, California 94044 USA.
3. **Pertinent Facts.** I, the undersigned, am an attorney of record in this application and attorney-in-fact for IronPort Systems, Inc., a Delaware corporation with a place of business at 1100 Grundy Lane, Suite 100, San Bruno, California 94066. I make the following declaration of pertinent facts in support of this petition.

One named inventor in this application, Mr. Scott Banister, is unavailable, or cannot be found or reached after diligent effort, or refuse to sign the application declaration. All the

available inventors in this application have made declaration on their own behalf as required by 37 C.F.R. §1.63. All the available inventors have made declaration on behalf of the non-signing joint inventors as required by 37 C.F.R. §1.64, by providing a declaration that is signed by all the available joint inventors with the signature block of the non-signing inventor left blank. See MPEP 409.03(a)(A).

This application or petition is accompanied by the following proof that the non-signing inventor cannot be found or reached after diligent effort or refuse to execute the application papers. See MPEP 409.03(a)(B).

IronPort filed this application on November 18, 2003. All the named inventors are employees of IronPort, or have been in the past. IronPort considers Mr. Scott Banister to be a current employee of IronPort, but Mr. Banister has ceased appearing at the company's workplace and discontinued performing work-related duties. Between February 23, 2004 and July 16, 2004, I made numerous attempts to contact Mr. Banister by telephone and e-mail to request him to review the application as filed and sign an inventor's declaration. However, he did not respond to these inquiries.

By letter dated May 3, 2004, and sent by first-class mail, certified, return receipt requested, I provided Mr. Banister with a complete copy of the application as filed, including drawing figures, and an inventor's Declaration and Assignment, and requested Mr. Banister to sign the Declaration and return it to me. A copy of the letter is attached at Tab 1. Mr. Banister failed to claim the envelope containing these materials, and the U.S. Postal Service returned the envelope to me unclaimed on approximately June 1, 2004. A copy of the envelope, stamped "Unclaimed" by the USPS, is attached at Tab 2. As of the date of this petition, Mr. Banister has not returned a signed Declaration.

On July 14, 2004, I telephoned Mr. Banister at his last known telephone number to request him to return a signed Declaration. On Mr. Banister's line, I reached a voice mail system, and left a recorded message in which I requested him to promptly contact me and return the signed Declaration. Mr. Banister has not returned the call.

BANISTER, Ser. No. 10/717,441, GAU 2173, Examiner Not Yet Assigned
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I respectfully submit that my letters and other attempts at communication to the non-signing inventors satisfy the requirements of MPEP 409.03(d) pertaining to inventors who refuse to join an application.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

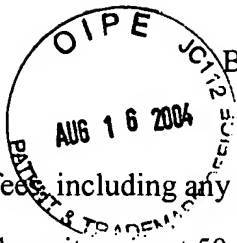
The Applicants and IronPort Systems, Inc., respectfully request the Commissioner to grant this petition.

Applicants and IronPort Systems, Inc. believe that all required fees are submitted herewith. However, throughout the pendency of this application, please charge any additional

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BANISTER, Ser. No. 10/717,441, GAU 2173, Examiner Not Yet Assigned
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fees, including any required extension of time fees, and credit all overpayments to our
deposit account 50-1302. A duplicate of this sheet is enclosed.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER

Dated: August 12, 2004

Christopher J. Palermo
Reg. No. 42,056

1600 Willow Street
San Jose, California 95125-5106
Telephone: (408) 414-1080
Facsimile: (408) 414-1076

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with
sufficient postage in an envelope addressed to the Mail Stop Missing Parts, Commissioner for Patents, Washington, D. C.
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Teresa Austin

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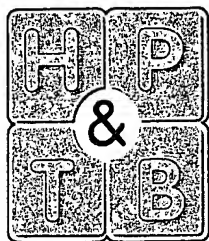
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SCOTT BANISTER
607 PARALON AVENUE
PACIFICA CA 94044

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Hickman Palermo Truong & Becker LLP
Intellectual Property Law

1600 Willow Street • San Jose • California • 95125-5106
Telephone (408) 414-1080 • Facsimile (408) 414-1076 • www.hptb-law.com

May 3, 2004

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Scott Banister
607 Farallon Avenue
Pacifica, CA 94044

Re: IronPort Systems, Inc.
U.S. Patent Application No. 10/717,441, filed November 18, 2003
"Electronic Message Delivery with Estimation Approaches"

Dear Scott:

IronPort Systems has filed the above-noted patent application. It is based in part on your work at the company, and therefore you were named as an inventor. A complete copy of the application as filed is enclosed.

We also enclose an Assignment of ownership rights to the company, and an inventor's Declaration. Pursuant to your employment agreement with the company, please review, sign and return the Assignment and Declaration to us. No notarization or other special processing is required. A postpaid Express Mail envelope is enclosed; you may return the signed papers to us by placing them in the Express Mail envelope and dropping it in any U.S. Postal Service "Express Mail" box.

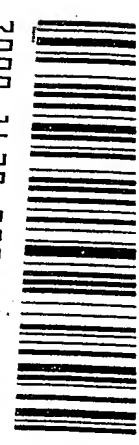
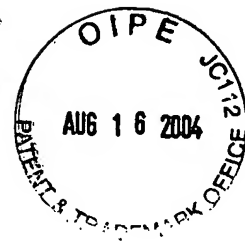
We appreciate your cooperation, and we believe that this will be the last time we will need to request your assistance. If you have any questions, please contact me at (408) 414-1202, or call Keith Valory of IronPort at (650) 989-6580.

Sincerely,

Christopher J. Palermo

Enclosures
/cjp

INTELLECTUAL PROPERTY LAW
1600 WILLOW STREET
SAN JOSE, CALIFORNIA 95125-5106



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4. Restricted Delivery? (Extra Fee) ☒ Yes

RESTRICTED DELIVERY



RESTRICTED DELIVERY

SCOTT BANISTER
607 FARALLON AVE
PACIFICA, CA 94044

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RESTRICTED DELIVERY



DER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, on the front if space permits.

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607 FARALLON AVENUE
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